

## 52.219-10

specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

[48 FR 42478, Sept. 19, 1983, as amended at 52 FR 19805, May 27, 1987; 54 FR 29283, July 11, 1989; 54 FR 49296, Nov. 30, 1989; 55 FR 3888, Feb. 5, 1990; 55 FR 52798, Dec. 21, 1990; 60 FR 48265, Sept. 18, 1995; 61 FR 2639, Jan. 26, 1996; 61 FR 31643, June 20, 1996; 63 FR 34067, June 22, 1998; 63 FR 36124, July 1, 1998; 63 FR 70276, 70293, Dec. 18, 1998; 64 FR 36224, July 2, 1999; 65 FR 46058, July 26, 2000; 65 FR 60547, Oct. 11, 2000; 66 FR 53493, Oct. 22, 2001; 67 FR 1858, Jan. 14, 2002; 70 FR 43583, July 27, 2005]

### 52.219-10 Incentive Subcontracting Program.

As prescribed in 19.708(c)(1), insert the following clause:

#### INCENTIVE SUBCONTRACTING PROGRAM (OCT 2001)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

(b) If the Contractor exceeds its subcontracting goals for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, and women-owned small business concerns in performing this contract, it will receive \_\_\_\_ [Contracting Officer to insert the appropriate number between 0 and 10] percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in 15.404-4 of the Federal Acquisition Regulation.

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(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 60 FR 48266, 48267, Sept. 18, 1995; 62 FR 51271, Sept. 30, 1997; 63 FR 36125, July 1, 1998; 63 FR 70277, Dec. 18, 1998; 64 FR 72449, Dec. 27, 1999; 65 FR 60548, Oct. 11, 2000; 66 FR 53493, Oct. 22, 2001]

### 52.219-11 Special 8(a) Contract Conditions.

As prescribed in 19.811-3(a), insert the following clause:

#### SPECIAL 8(A) CONTRACT CONDITIONS (FEB 1990)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements and advance payments, delegates to the \_\_\_\_ [insert name of contracting agency] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; *provided, however*, that the \_\_\_\_ [insert name of contracting agency] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the \_\_\_\_ [insert name of contracting agency].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the *Disputes* clause of said subcontract.

(f) To notify the \_\_\_\_ [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

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(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 46009, Oct. 31, 1989; 55 FR 3888, Feb. 5, 1990; 61 FR 67422, Dec. 20, 1996]

### 52.219-12 Special 8(a) Subcontract Conditions.

As prescribed in 19.811-3(b), insert the following clause:

#### SPECIAL 8(A) SUBCONTRACT CONDITIONS (FEB 1990)

(a) The Small Business Administration (SBA) has entered into Contract No. \_\_\_\_ [insert number of contract] with the \_\_\_\_ [insert name of contracting agency] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The \_\_\_\_ [insert name of subcontractor], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. \_\_\_\_ [insert number of contract] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the \_\_\_\_ [insert name of contracting agency] with complete authority to take any action on behalf of the Government under the terms and conditions of this contract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the \_\_\_\_ [insert name of contracting agency].

(4) That it will notify the [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the \_\_\_\_ [insert name of contracting agency].

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 54 FR 34757, Aug. 21, 1989; 54 FR 46009, Oct. 31, 1989; 55 FR 3889, Feb. 5, 1990; 55 FR 38518, Sept. 18, 1990; 61 FR 67422, Dec. 20, 1996]

### 52.219-13 [Reserved]

### 52.219-14 Limitations on Subcontracting.

As prescribed in 19.508(e) or 19.811-3(e), insert the following clause:

#### LIMITATIONS ON SUBCONTRACTING (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

[52 FR 38190, Oct. 14, 1988, as amended at 55 FR 52798, Dec. 21, 1990; 61 FR 67411, Dec. 20, 1996; 64 FR 32749, June 17, 1999]

### 52.219-15 [Reserved]

### 52.219-16 Liquidated Damages—Subcontracting Plan.

As prescribed in 19.708(b)(2), insert the following clause:

#### LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)

(a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “Small Business Subcontracting Plan,” or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close